



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF OCTOBER 21, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 21, 2004 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Kautz – Land Use Planner, and Ms. Mowbray – Zoning Inspector III.

No action was taken on the Minutes of October 14, 2004 since they had just been circulated.

### OLD BUSINESS

Subdivision #2002-47 – application of **JAMES C. WELLS, JR.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 38.10 acres into 16 lots, located north of Road 214, 1,100 feet southeast of Route 30.

Mr. Lank advised the Commission that the final record plan for this application has been changed to 15 lots; that the application received preliminary approval on April 17, 2003 for 16 lots; that the Commission granted a one-year time extension on April 29, 2004; that the final record plan has been reduced to 15 lots, complies with the Subdivision Ordinance and that all appropriate agency approvals have been received.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant final approval of Subdivision #2002-47.

Motion carried 4 – 0.

### PUBLIC HEARINGS

APD #2004-2 – application of **DONALD E. AND DAWN H. STEEN** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred for four (4) parcels of land totaling 227.85 acres, more or less, located on both sides of Road 467A (East Elliotts Dam Road), 300 feet west of Road 446

(Beaver Dam Branch Road) for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that this grain, vegetable and poultry farm contains 210 acres of crop land, 10.6 acres of woodland, ¼ acre of aquaculture, 5 acres set aside for a residence and farm buildings, and 2 acres of tidal wetlands within the Branch.

Minutes  
October 21, 2004  
Page 2

The Commission found that there were no parties present on behalf of this application.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with a recommendation that the application be approved.

Motion carried 4 – 0.

APD #2004-3 – application of **THOMAS W. BENNETT, SR. AND CARLSTEN AND DOLSON, L.L.C.** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential District in Cedar Creek Hundred for two (2) parcels of land totaling 269.39 acres, more or less, located on both sides of Road 38 (Wells Road), 900 feet northwest of Road 219 (Buttonwood Road) for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that the Bennett farm, a grain farm, contains 86 acres of cropland, 70.4 acres of woodland, 6 acres of pasture land, 10 acres of wetlands, and has 5 acres set aside for a residence and farm buildings, and that the Carlsten and Dolson farm contains 65 acres of cropland, 22 acres of woodland, 2 acres for aquaculture, and has 2 acres set aside for a residence and farm buildings.

The Commission found that Thomas Bennett, Sr. was present on behalf of both property owners and stated that there is a farm lane easement that crosses the property.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with a recommendation that the application be approved.

Motion carried 4 – 0.

APD #2004-4 – application of **DAVID A. AND CYNTHIA Y. JONES, BENJAMIN A. JONES, JONATHAN D. JONES, JOSEPH W. AND RITA F. WELLS** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential District in Cedar Creek Hundred for six (6) parcels of land totaling 438 acres, more or less, located on both

sides of Road 623 (East Hudson Pond Road), east of Route 42 (North Union Church Road) and south of Road 625 (Clendaniel Road) for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Minutes  
October 21, 2004  
Page 3

Mr. Lank advised the Commission that the David A. and Cynthia Y. Jones property contains 138 acres of woodland; that the Benjamin A. Jones grain farm contains 65 acres of cropland and 61 acres of woodland; that the Jonathan D. Jones grain farm contains 28 acres of cropland and 96 acres of woodland; and that the Joseph W. and Rita F. Wells grain farm contains 25 acres of cropland and 25 acres of woodlands.

The Commission found that Benjamin A. Jones was present on behalf of the applicants and stated that there are no easements on the properties.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with a recommendation that the application be approved.

Motion carried 4 – 0.

C/Z #1556 – application of **DOUGLAS W. BROCKWAY** to amend the Comprehensive Zoning Map from a GR General Residential District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying west of Route 288 (Wil-King Road), 4,100 feet north of Route 280-B, to be located on 1.67 acres, more or less.

C/U #1568 – application of **DOUGLAS W. BROCKWAY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a boat repair and accessory installation business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.67 acres, more or less, lying west of Route 288 (Wil-King Road), 4, 100 feet north of Route 280-B.

There was a consensus of the Commission and Mr. Brockway that a joint public hearing be held for C/Z #1556 and C/U #1568. It was noted that the decisions would be made separately for each application.

Mr. Lank summarized the public hearing held for Mr. Brockway on January 8, 2004 in reference to C/Z #1529 and the Commission recommendations of January 22, 2004.

The Commission found, based on comments received from DelDOT in reference to C/Z #1529, that if the County is inclined to approve the rezoning, the Department would prefer that the County do so through the Conditional Use process, limiting the subject property to exactly what is proposed; that a traffic impact study was not recommended; that the Department is still concerned about the application whether it is a Conditional Use or a rezoning; that the proposed use would be inconsistent with the Strategies for State Policies and Spending document; that normally the Department would recommend

Minutes  
October 21, 2004  
Page 4

that the County deny the application; and that because there is an existing business on the property the Department would not oppose a Conditional Use.

The Commission found that Douglas Brockway was present and stated in his presentation and in response to questions raised by the Commission that he started the business in a commercial district on Savannah Road in 1988; that he relocated the business to this lot in 1998; that he operates the business with his son and a sub-contractor; that they install t-tops, rod holders, leaning post, and other aluminum and stainless steel accessories on boats; that they do not do any boat motor work, only accessory installation work; that typically there would be no more than 3 customer boats on the site at any one time; that he has allowed friends to store their boats on the site; that access to the shop is from Penny Lane, a private road; and that he cleared the right-of-way of Penny Lane, graded the roadway, and placed select fill material and gravel on the roadway prior to anyone else building along Penny Lane.

The Commission found that there were no parties present in support of this application.

The Commission found that Gary Kaier and Marian Rossi were present in opposition to the application since the shop is being accessed through Penny Lane; that Penny Lane is a private road; that there are no agreements of record allowing Mr. Brockway to utilize the road; that they are concerned about safety due to the hazards of vehicles pulling boats on trailers; that traffic in the area is increasing due to the development in the area; that mail boxes have been knocked over several times; that litigation has been filed in State courts for a decision on whether Mr. Brockway has the right to utilize the private road; that they have seen at least 7 to 9 boats on the site at one time; that they are concerned that a precedent may be set for additional applications along Penny Lane and in the area; that they are concerned about liability since they share maintenance and ownership of the private road; that they purchased their lots with the understanding that the owners of Lots 2,3 and 4 own the road; that they are concerned about noise and the number of employees that may be employed on the premise; and that they are not opposed to the use, only the access.

Mr. Brockway advised the Commission that he is not asking for a boat storage facility.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Robertson asked for time to review the road right-of-way.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to defer action on C/Z #1556.

Motion carried 4 – 0.

Minutes  
October 21, 2004  
Page 5

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to defer action on C/U #1568.

Motion carried 4 – 0.

C/Z #1557 – From an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Double Bridges Road (Route 363), 1,100 feet southwest of Muddy Neck Road (Road 361), to be located on 64.16 acres, more or less, and being lands of **MUDDY NECK, L.L.C.**

The Commission found that the Applicants submitted an Exhibit Booklet which contains a presentation outline; references to zoning, land utilization, civil engineering, and traffic; maps of the area zonings; aerial photographs; site plans; flood maps; a conceptual sewer layout; letters from Delaware Electric Cooperative, Inc., Mediacom, Sharp Energy, Tidewater Utilities, and Verizon; a letter from Davis, Bowen & Friedel, Inc. providing a background/project description on stormwater, water supply, wastewater treatment, traffic, species and habitats, wetlands, agriculture and forest, infrastructure, historic and cultural resources, and related topics; and a copy of a DelDOT response to a Traffic Impact Study (TIS) performed on the site.

Mr. Lank advised the Commission that rather than him reading the comments from the County Engineering Department Planning and Permits Division and the Office of State Planning Coordination he is submitting the comments for review by the Commission. The comments included a 15-page letter with comments from the agencies participating in the Preliminary Land Use Service (PLUS) dated August 19, 2004 and a letter dated September 27, 2004. The comments are a part of the record for this application.

Mr. Lank also provided the Commission with copies of letters in opposition from David Kramer, Heather Sheridan, Mr. and Mrs. Tenence Noon, Robert and Donella Gano, and Sandy Pool and Laura Leight. The letters are a part of the record for this application.

The Commission found that Lauren Alberti was present on behalf of the Applicants with James Fuqua, Attorney, and Zac Crouch of Davis, Bowen & Friedel, Inc. and that Mr.

Fuqua and Mr. Crouch stated in their presentations and in response to questions raised by the Commission that the Applicants propose to build 138 condominium units containing 50 single family units and 88 townhouse designed units; that no commercial uses are proposed or requested; that the site contains 64.23 acres of which 24.7 acres are wetlands; that 11.14 acres of the wetlands area is considered State wetlands; that the site will be served by County sewer; that central water is proposed; that DelDOT has advised them that their review of the TIS indicates that this development would have minimal impact on the studied intersections; that the TIS indicates that these intersections operate and

Minutes

October 21, 2004

Page 6

would continue to operate at or above acceptable levels of service for all present and future cases studied; that improvements should be made at the site entrance along Double Bridges Road to provide safety and convenience for motorists, pedestrians and bicyclists in the area; that should the County choose to approve the project, the Department recommends preliminarily that the developer provide a separate westbound left-turn lane and an eastbound right-turn deceleration lane on Double Bridges Road; that sidewalks should be incorporated into the design of the internal street network, the Double Bridges Road frontage and the entrance of this development and shoulders should be required on the Double Bridges Road frontage; and that the Department will address these items further in their review of the plans for the site; that the Applicants will comply with all of DelDOT requirements; that wetlands have been delineated by Evelyn M. Maurmeyer of Coastal & Estuarine Research, Inc.; that the U. S. Army Corps. of Engineers has not yet verified Ms. Maurmeyer's delineation; that there should be minimal impact on the enrollment of the Indian River School District; that the site is located in the Millville Volunteer Fire Company service area; that shops and service uses are in the area; that the site is in close proximity to recreational areas in Bethany Beach and the State Parks; that according to the 2002 Comprehensive Plan Update the site is located in the Environmentally Sensitive Developing Area, a growth area where clustering and village style projects are encouraged; that they have made presentations to the PLUS process several times and changed the plans accordingly; that originally it was proposed that a 147 lot cluster subdivision be proposed with all of the ditches being filled; that a second plan was proposed for single family homes and townhouse condominiums with filling of the ditches; that a third plan was proposed with no filling of the ditches; and that this plan has more buffers with a mixture of single family homes and townhouse condominiums and no filling of the ditches; that all wetland areas will remain undisturbed and placed in a conservation easement; that recreational uses include a clubhouse and swimming pool; that there are 36.83 acres of open space exclusive of wetlands; that sewer capacity is available and that they are in the process of applying for annexation into a sewer district; that central water will be provide for domestic water and fire protection; that propane service will be provided by Sharp Energy; that streets will be built to County specifications with rolled curbs and sidewalks on both sides of the streets; that the stormwater management facilities will include some bio-retention areas and stormwater management ponds created to DNREC requirements; that by clustering more open space is provided along woodlands and State lands; that a minimal impact is anticipated on

wetlands since they only propose 6 crossings for roadways over upland wetlands, and the ditches; that DNREC has requested a buffer from agricultural lands owned by the State; that a 50-foot wide buffer is proposed; that there will be minimal or no impact on woodlands; that Clearwater RPC is located across from the site; that Ocean Farms, a MR subdivision, Waterside, a HR-RPC, and Bethany Meadows, a HR-RPC are all in close proximity to the site; that they are planning on fencing the property line along the agricultural lands back to the woodlands; that they propose to provide references in the deeds for public notice that agricultural uses and hunting activities exists on the adjacent

Minutes

October 21, 2004

Page 7

properties; that the conservation easement referenced is proposed to be conveyed to the State; that they understand the comments in the letters of opposition, but the letter writers need to realize that this site is located in a growth area where development will take place, that central water is available, that central sewer is available, and that the site is located in an expanding residential area; that clustering reduces the impacts on wetlands and woodlands; and that they have no objections to a requirement that buffers be forested.

The Commission found that Mr. Fuqua submitted a set of proposed conditions if the rezoning is approved. The conditions are made a part of the record for this application.

The Commission found that Ralph Jordan, Laura Leight and Sandy Pool were present in opposition to the application expressing concerns about the Inland Bays and the Little Bay Tax Ditch; that the County should enforce the perennial stream buffer requirement from the Little Bay Tax Ditch; that a minimum of 50-foot setback is required; that they are concerned about maintenance of the stormwater management ponds; that the Little Assawoman Bay Conservancy "LABCON" is opposed to any rezoning that increases density or impacts the wildlife area; that DelDOT has designated Double Bridges Road as an alternate to Route 54; that Double Bridges Road is very dangerous for bikers since there are no shoulders; that there are not any townhouse units along Double Bridges Road; and that if any development takes place on this site it should be limited to single family residential lots with lots and homes in compliance with the present zoning.

The Commission found that Ms. Pool submitted a cover letter and signatures on a petition in opposition to the application. The petition contains 127 signatures of residents from Malcolm Manor, Summerset, Plantation Park Marina, Plantation Park I and II, and the Dickerson Creek area.

The Commission found that Tim Elder was present in support of the application and stated that the County anticipated that this area would be a growth area when the Comprehensive Plan Update was developed, and that he does have some concerns about the need for road improvements in the area.

By a show of hands the Commission found that there were 2 parties present in support of the application and 4 parties present in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to defer action.

Motion carried 4 – 0.

Minutes  
October 21, 2004  
Page 8

### OTHER BUSINESS

#### Breakwater Estates MR/RPC Phase 2 Site Plan – Road 267

Mr. Lank advised the Commission that this Site Plan was originally reviewed by the Commission on June 24, 2004 under Parcel B of the Cadbury MR/RPC and received preliminary approval; that 80 single family lots are still proposed; that 105 multi-family units are still proposed; that there is a mixture of 6 and 7 unit townhouse buildings and duplexes; that the Site Plan meets the requirements of the Zoning Ordinance for preliminary approval; that the name of the project needs to be changes; and that final approval shall be subject to the review and approval of the Commission upon receipt of all appropriate agency approvals since the project is an RPC.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval of the Site Plan. Final approval shall be subject to review and approval by the Commission upon receipt of all appropriate agency approvals.

Motion carried 4 – 0.

#### Gills Neck Shopping Center Revised Commercial Site Plan – Route One

Mr. Lank advised the Commission that this commercial Site Plan for 90,074 square feet of retail was approved by the Commission on January 25, 2001 and September 13, 2001; that the revised site plan has been reduced to 88,394 square feet in two buildings; that the Site Plan meets the requirements of the Zoning Ordinance; and that all appropriate agency approvals have been received for the revised Site Plan.

The Commission found that Jessica Nichols of Meridian Engineering was present and stated that the Site Plan was altered to the site plan criteria requirements of Safeway.



Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant final approval of the revised Site Plan.

Motion carried 4 – 0.

#### Route 24 Retail

##### Commercial Site Plan – Route 24

Mr. Lank advised the Commission that this Site Plan is for a 6,576 square foot retail building and a 5,242 square foot non-residential/retail building; that the Commission

Minutes

October 21, 2004

Page 9

deferred action on September 9, 2004 due to concerns about the 15 parking spaces within the front yard setback, the lack of screening along the rear property line, the lack of landscaping and vehicular circulation; that the design engineers have advised that the parking spaces located in the front yard setback are similar to the parking on the adjoining commercial property, that the driveway provides a smooth transition with the parking layout, and that a 6' high vinyl fence has been added along the rear property line; that the Site Plan is acceptable for preliminary approval if a waiver is granted for the parking within the front yard setback; and that final approval could be subject to the staff receiving all appropriate agency approvals.

The Commission found that Ken Christenbury of River Basin Engineering was present and stated that the fence along Route 24 will be removed; that the front retail building is proposed to be a UPS store and office; that the rear building is proposed to be professional or medical offices or a deli; and that parking was designed for gross leasable area.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to grant preliminary approval of the Site Plan and a waiver for the parking within the front yard setback. Final approval shall be subject to the staff receiving all appropriate agency approvals.

Motion carried 4 – 0.

#### Kevin Davis

##### C/U #1534 – Site Plan – Road 473

Mr. Lank advised the Commission that this Site Plan is for Conditional Use #1534 for an auto body repair shop; that the Conditional Use was approved on May 18, 2004; that the Site Plan is the same as the one submitted during the public hearing process; that the 6 conditions of approval are referenced on the Site Plan; that the Site Plan is suitable for preliminary approval; and that final approval could be subject to the staff receiving all appropriate agency approvals.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval of the Site Plan and that final approval shall be subject to receipt of all appropriate agency approvals by the staff.

Motion carried 4 – 0.

Beebe Medical Center  
C/U #1559 – Site Plan – Route 24

Minutes  
October 21, 2004  
Page 10

Mr. Lank advised the Commission that this Site Plan is for expansion of the outpatient medical center; that Conditional Use #1559 was approved on March 30, 2004; that the Site Plan is the same as the one submitted during the public hearing process; that the Site Plan is suitable for preliminary approval; and that final approval could be subject to the staff receiving all appropriate agency approvals.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval of the Site Plan and that final approval shall be subject to receipt of all appropriate agency approvals by the staff.

Motion carried 4 – 0.

Subdivision #2003-53 – Sunland Properties, L.L.C.  
Request for Reconsideration – Route 5

Mr. Lank advised the Commission that Sunland Properties, L.L.C. has requested reconsideration of the denial of their preliminary subdivision; that the application was denied on September 9, 2004; that another application, Route 30, L.L.C., was reconsidered and went through a public hearing; that a decision to deny the Norris Niblett application was reversed; and that if the Commission is favorable toward considering the reconsideration, it should be after a public hearing.

Mr. Lank read a letter from William Schab of Schab & Barnett, P.A. describing the request for reconsideration.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant the request for reconsideration with the condition that a public hearing shall not be scheduled until the Applicant has demonstrated that the boundary line agreement with the adjacent property owners has been agreed upon.

Motion carried 4 – 0.

Timothy L. Corkell

Waiver for Preliminary Plan Requirements – Road 570

Mr. Lank advised the Commission that Mr. Corkell is requesting a waiver from the topography requirements for a preliminary site plan; that a 50' wide right-of-way is proposed at the location of an existing driveway; that Mr. Corkell wants to subdivide the rear of the parcel into 2 lots with access from the proposed right-of-way; that the Commission may approve the Site Plan in concept or require a major subdivision application.

Minutes

October 21, 2004

Page 11

Mr. Lank read a letter from Harry Murphy of Charles D. Murphy Associates, Inc. stating that the proposed right-of-way shown on the Site Plan encompasses an existing farm lane and that the Applicant is requesting that the Commission recognize this existing farm lane as an existing road.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously that the subdivision be granted in concept with the stipulation that there shall be no further subdivision of Lots 1 or 2 within the subdivision and that a cul-de-sac be created at the end of the cul-de-sac street

Motion carried 4 – 0.

Shane Phillips

Lot on Existing 50' Right-of-Way – Route 24

Mr. Lank advised the Commission that Mr. Phillips is requesting to create a 1 acre lot with access from an existing 50' right-of-way off of Route 24; that under an old policy this lot would be the third lot created with access from the right-of-way and that any further subdivision of lots along this right-of-way would require an application for a major subdivision.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously that the lot on the existing 50' right-of-way be granted in concept with the stipulation that any further subdivision along this right-of-way shall require an application for a major subdivision.

Meeting adjourned at 9:38 p.m.